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09/723,508	11/28/2000	Glen T. Anderson	680.0037USU	4904

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EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 06/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/723,508	ANDERSON, GLEN T.
	Examiner Gina C. Yu	Art Unit 1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 05 March 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-20 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s) _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Receipt is acknowledged of Amendment filed on March 5, 2003. Claims 1-20 are pending. Claim rejection under 35 U.S.C. § 112, second paragraph as indicated in the previous Office action dated November 5, 2003 is withdrawn in view of applicants' amendments. Claim rejection under § 103 in the previous Office action is maintained for the reasons of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rouquet et al. (US 6258345 B1) in view of LaFleur et al. (US 5658579) ("LaFleur").

Rouquet et al. describe a topical composition comprising crosslinked elastomeric organopolysiloxane and spherical polymeric particles with a particle diameter of less than 10 microns in a liquid fatty phase. See abstract. Employing each of the elastomeric organopolysiloxane and the spherical particles in the amount of 2-20 % of the total weight of the composition, is disclosed in col. 3, lines 46 – 58, which meets instant claims 11-13. Nylon or polydimethylsiloxane particles are used, which meets claim 14. See col. 2, lines 37 – 54. Claim 16 is met by the disclosure of the additional ingredients in col. 5, lines 15 – 38. The vehicles of the composition in claim 17 and the method of using the invention in claims 18-20 are described in Examples.

Rouquet fails to teach the particle size distribution of the spherical particles.

LaFleur teaches powder compositions comprising combination of talc having specified particle size distribution. See col. 2, lines 10 – 34. The reference teaches that the talc therein comprises particles having a particle size distribution of 10 microns or less; 15 microns or less; and 20 microns or less. See instant claims 3-5, 9, and 10. The reference teaches that the invention provides improved coverage, uniformity, and natural look, which are attributed by the particle size distribution of talc. See col. 3, lines 1 – 64. As for claim 1 and 7, examiner takes the position that the prior art renders the claimed particle size distribution of 24 obvious. Based on the prior art teaching that a particle size distribution of 20 microns or less renders the said benefits, it would have been obvious to a routineer to discover a workable particle size distribution by routine experimentation.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Rouquer by adding the talc particles having specific particle size distributions as suggested by LaFleur because of the expectation of successfully producing cosmetic compositions that provide improved coverage, uniformity, and natural look to the skin. Nothing nonobvious or unexpected is seen in using conventional cosmetic ingredients as suggested by the prior arts for the known purposes.

Response to Arguments

Applicant's arguments filed March 5, 2003 have been fully considered but they are not persuasive.

Applicants argue that the modification of the Rouquet patent in view of LaFleur as proposed by examiner would not have been obvious allegedly because the earliest filing

date of the LaFleur patent took place before the Rouquet filing date. Applicants assert that the inventors of the Rouquet patent were not influenced by the teachings of the LaFleur reference, and thus the claimed invention would have been nonobvious and undesirable. Examiner respectfully disagrees.

The obviousness standard is determined at the level of ordinary skill in cosmetic art *at the time the present invention was made*. The filing date of the present invention occurred after the filing date of the Rouquet patent and the publication date of the LaFleur patent. The Rouquet and LaFleur references are proper 102(e) and 102(b) references, and the legal test of the obviousness standard is met. The motivation to adjust the particle size distribution of the Rouquet composition as taught by the LaFleur would have been obvious to the routineer at the time of the present invention because of the objective teachings in LaFleur that such particle size distribution would produce improved coverage, uniformity, and natural looks to the skin. Examiner takes the position that the obviousness rejection complies with the legal standard that is well settled in patent law and thus is proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
June 16, 2003



SREENI PADMANABHAN
PRIMARY EXAMINER

